

REFERENCE TITLE: **abortion; information**

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

## **SB 1374**

Introduced by  
Senators Hobbs, Dalessandro, Gallardo; Representatives Cardenas, Gabaldón,  
Steele; Senators Farley, Tovar; Representative Alston

**AN ACT**

**AMENDING SECTIONS 36-2153 AND 36-2158, ARIZONA REVISED STATUTES; RELATING TO  
ABORTION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2153, Arizona Revised Statutes, is amended to  
3 read:

4 36-2153. Informed consent; requirements; information; website;  
5 signs; violation; civil relief; statute of  
6 limitations

7 A. An abortion shall not be performed or induced without the voluntary  
8 and informed consent of the woman on whom the abortion is to be performed or  
9 induced. Except in the case of a medical emergency and in addition to the  
10 other requirements of this chapter, consent to an abortion is voluntary and  
11 informed only if all of the following are true:

12 1. At least twenty-four hours before the abortion, the physician who  
13 is to perform the abortion or the referring physician has informed the woman,  
14 orally and in person, of:

15 (a) The name of the physician who will perform the abortion.

16 (b) The nature of the proposed procedure or treatment.

17 (c) The immediate and long-term medical risks associated with the  
18 procedure that a reasonable patient would consider material to the decision  
19 of whether or not to undergo the abortion.

20 (d) Alternatives to the procedure or treatment that a reasonable  
21 patient would consider material to the decision of whether or not to undergo  
22 the abortion.

23 (e) The probable gestational age of the unborn child at the time the  
24 abortion is to be performed.

25 (f) The probable anatomical and physiological characteristics of the  
26 unborn child at the time the abortion is to be performed.

27 (g) The medical risks associated with carrying the child to term.

28 2. At least twenty-four hours before the abortion, the physician who  
29 is to perform the abortion, the referring physician or a qualified physician,  
30 physician assistant, nurse, psychologist or licensed behavioral health  
31 professional to whom the responsibility has been delegated by either  
32 physician has informed the woman, orally and in person, that:

33 (a) Medical assistance benefits may be available for prenatal care,  
34 childbirth and neonatal care.

35 (b) The father of the unborn child is liable to assist in the support  
36 of the child, even if he has offered to pay for the abortion. In the case of  
37 rape or incest, this information may be omitted.

38 (c) Public and private agencies and services are available to assist  
39 the woman during her pregnancy and after the birth of her child if she  
40 chooses not to have an abortion, whether she chooses to keep the child or  
41 place the child for adoption.

42 (d) It is unlawful for any person to coerce a woman to undergo an  
43 abortion.

44 (e) The woman is free to withhold or withdraw her consent to the  
45 abortion at any time without affecting her right to future care or treatment

1 and without the loss of any state or federally funded benefits to which she  
2 might otherwise be entitled.

3 (f) The department of health services maintains a website that  
4 describes the unborn child and lists the agencies that offer alternatives to  
5 abortion.

6 (g) The woman has a right to review the website and that a printed  
7 copy of the materials on the website will be provided to her free of charge  
8 if she chooses to review these materials.

9 3. The information in paragraphs 1 and 2 of this subsection is  
10 provided to the woman individually and in a private room to protect her  
11 privacy and to ensure that the information focuses on her individual  
12 circumstances and that she has adequate opportunity to ask questions.

13 4. The woman certifies in writing before the abortion that the  
14 information required to be provided pursuant to paragraphs 1 and 2 of this  
15 subsection has been provided.

16 B. If a medical emergency compels the performance of an abortion, the  
17 physician shall inform the woman, before the abortion if possible, of the  
18 medical indications supporting the physician's judgment that an abortion is  
19 necessary to avert the woman's death or to avert substantial and irreversible  
20 impairment of a major bodily function.

21 C. The department of health services shall establish a website ~~within~~  
22 ~~ninety days after the effective date of this amendment to this section~~ and  
23 shall annually update the website. The website must include a link to a  
24 printable version of all materials listed on the website. The materials must  
25 be written in an easily understood manner and printed in a typeface that is  
26 large enough to be clearly legible. The website must include all of the  
27 following materials:

28 1. Information that is organized geographically by location and that  
29 is designed to inform the woman about public and private agencies and  
30 services that are available to assist a woman through pregnancy, at  
31 childbirth and while her child is dependent, including adoption agencies.  
32 The materials shall include a comprehensive list of the agencies, a  
33 description of the services they offer and the manner in which these agencies  
34 may be contacted, including the agencies' telephone numbers and website  
35 addresses. ~~THE DEPARTMENT SHALL REQUIRE THAT EACH PRIVATE AGENCY LISTED ON~~  
36 ~~ITS WEBSITE THAT CLAIMS TO ASSIST A WOMAN THROUGH PREGNANCY INFORM ITS~~  
37 ~~CLIENTS OF ALL PREGNANCY-RELATED OPTIONS, INCLUDING THE RIGHT TO A LEGAL~~  
38 ~~ABORTION, OR POST AT LEAST ONE CLEARLY LEGIBLE SIGN IN A CONSPICUOUS WAITING~~  
39 ~~ROOM LOCATION THAT STATES THAT THE AGENCY DOES NOT PROVIDE ANY INFORMATION~~  
40 ~~ABOUT ABORTION SERVICES.~~

41 2. Information on the availability of medical assistance benefits for  
42 prenatal care, childbirth and neonatal care.

43 3. A statement that it is unlawful for any person to coerce a woman to  
44 undergo an abortion.

45 4. A statement that any physician who performs an abortion on a woman  
46 without obtaining the woman's voluntary and informed consent or without

affording her a private medical consultation may be liable to the woman for damages in a civil action.

5. A statement that the father of a child is liable to assist in the support of that child, even if the father has offered to pay for an abortion, and that the law allows adoptive parents to pay costs of prenatal care, childbirth and neonatal care.

6. Information that is designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including pictures or drawings representing the development of unborn children at two-week gestational increments and any relevant information on the possibility of the unborn child's survival. The pictures or drawings must contain the dimensions of the unborn child and must be realistic and appropriate for each stage of pregnancy. The information provided pursuant to this paragraph must be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

7. Objective information that describes the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.

D. An individual who is not a physician shall not perform a surgical abortion.

E. A person shall not write or communicate a prescription for a drug or drugs to induce an abortion or require or obtain payment for a service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the twenty-four hour reflection period required by subsection A of this section.

F. A person shall not intimidate or coerce in any way any person to obtain an abortion. A parent, a guardian or any other person shall not coerce a minor to obtain an abortion. If a minor is denied financial support by the minor's parents, guardians or custodian due to the minor's refusal to have an abortion performed, the minor is deemed emancipated for the purposes of eligibility for public assistance benefits, except that the emancipated minor may not use these benefits to obtain an abortion.

G. An abortion clinic as defined in section 36-449.01 shall conspicuously post signs that are visible to all who enter the abortion clinic, that are clearly readable and that state it is unlawful for any person to force a woman to have an abortion and a woman who is being forced to have an abortion has the right to contact any local or state law enforcement or social service agency to receive protection from any actual or threatened physical, emotional or psychological abuse. The signs shall be posted in the waiting room, consultation rooms and procedure rooms.

H. A person shall not require a woman to obtain an abortion as a provision in a contract or as a condition of employment.

1 I. A physician who knowingly violates this section commits an act of  
2 unprofessional conduct and is subject to license suspension or revocation  
3 pursuant to title 32, chapter 13 or 17.

4 J. In addition to other remedies available under the common or  
5 statutory law of this state, any of the following may file a civil action to  
6 obtain appropriate relief for a violation of this section:

7 1. A woman on whom an abortion has been performed without her informed  
8 consent as required by this section.

9 2. The father of the unborn child if married to the mother at the time  
10 she received the abortion, unless the pregnancy resulted from the plaintiff's  
11 criminal conduct.

12 3. The maternal grandparents of the unborn child if the mother was not  
13 at least eighteen years of age at the time of the abortion, unless the  
14 pregnancy resulted from the plaintiff's criminal conduct.

15 4. A WOMAN WHO WAS NOT PROVIDED WITH INFORMATION REGARDING HER RIGHT  
16 TO A LEGAL ABORTION BY A PRIVATE AGENCY THAT CLAIMS TO ASSIST A WOMAN THROUGH  
17 PREGNANCY UNLESS THAT AGENCY NOTIFIED THE WOMAN PURSUANT TO SUBSECTION C,  
18 PARAGRAPH 1 OF THIS SECTION THAT THE AGENCY DOES NOT PROVIDE ANY INFORMATION  
19 ABOUT ABORTION SERVICES.

20 K. A civil action filed pursuant to subsection J of this section shall  
21 be brought in the superior court in the county in which the woman on whom the  
22 abortion was performed resides and may be based on a claim that failure to  
23 obtain informed consent was a result of simple negligence, gross negligence,  
24 wantonness, wilfulness, intention or any other legal standard of care.  
25 Relief pursuant to subsection J of this section includes the following:

26 1. Money damages for all psychological, emotional and physical  
27 injuries resulting from the violation of this section.

28 2. Statutory damages in an amount equal to five thousand dollars or  
29 three times the cost of the abortion, whichever is greater.

30 3. Reasonable attorney fees and costs.

31 L. A civil action brought pursuant to this section must be initiated  
32 within six years after the violation occurred.

33 Sec. 2. Section 36-2158, Arizona Revised Statutes, is amended to read:

34 36-2158. Informed consent; fetal condition; website;  
35 unprofessional conduct; civil relief; statute of  
36 limitations; definitions

37 A. A person shall not perform or induce an abortion without first  
38 obtaining the voluntary and informed consent of the woman on whom the  
39 abortion is to be performed or induced. Except in the case of a medical  
40 emergency and in addition to the other requirements of this chapter, consent  
41 to an abortion is voluntary and informed only if all of the following occur:

42 1. In the case of a woman seeking an abortion of her unborn child  
43 diagnosed with a lethal fetal condition, at least twenty-four hours before  
44 the abortion the physician who is to perform the abortion or the referring  
45 physician has informed the woman, orally and in person, that:

1 (a) Perinatal hospice services are available and the physician has  
2 offered this care as an alternative to abortion.

3 (b) The department of health services maintains a website that lists  
4 perinatal hospice programs that are available both in this state and  
5 nationally and that are organized geographically by location.

6 (c) The woman has a right to review the website and that a printed  
7 copy of the materials on the website will be provided to her free of charge  
8 if she chooses to review these materials.

9 2. In the case of a woman seeking an abortion of her unborn child  
10 diagnosed with a nonlethal fetal condition, at least twenty-four hours before  
11 the abortion the physician who is to perform the abortion or the referring  
12 physician has informed the woman, orally and in person:

13 (a) Of up-to-date, evidence-based information concerning the range of  
14 outcomes for individuals living with the diagnosed condition, including  
15 physical, developmental, educational and psychosocial outcomes.

16 (b) That The department of health services maintains a website that  
17 lists information regarding support services, hotlines, resource centers or  
18 clearinghouses, national and local peer support groups and other education  
19 and support programs available to assist the woman and her unborn child, any  
20 national or local registries of families willing to adopt newborns with the  
21 nonlethal fetal condition and contact information for adoption agencies  
22 willing to place newborns with the nonlethal fetal condition with families  
23 willing to adopt. THE DEPARTMENT SHALL REQUIRE THAT EACH PRIVATE AGENCY  
24 LISTED ON ITS WEBSITE THAT CLAIMS TO ASSIST A WOMAN THROUGH PREGNANCY INFORM  
25 ITS CLIENTS OF ALL PREGNANCY-RELATED OPTIONS, INCLUDING THE RIGHT TO A LEGAL  
26 ABORTION, OR POST AT LEAST ONE CLEARLY LEGIBLE SIGN IN A CONSPICUOUS WAITING  
27 ROOM LOCATION THAT STATES THAT THE AGENCY DOES NOT PROVIDE ANY INFORMATION  
28 ABOUT ABORTION SERVICES.

29 (c) That the woman has a right to review the website and that a  
30 printed copy of the materials on the website will be provided to her free of  
31 charge if she chooses to review these materials.

32 3. The woman certifies in writing before the abortion that the  
33 information required to be provided pursuant to this subsection has been  
34 provided.

35 B. The department of health services shall establish a website ~~within~~  
36 ~~ninety days after the effective date of this section~~ and shall annually  
37 update the website. The website shall include the information prescribed in  
38 subsection A, paragraph 1, subdivision (b) and paragraph 2, subdivision (b)  
39 of this section.

40 C. A physician who knowingly violates this section commits an act of  
41 unprofessional conduct and is subject to license suspension or revocation  
42 pursuant to title 32, chapter 13 or 17.

43 D. In addition to other remedies available under the common or  
44 statutory law of this state, any of the following individuals may file a  
45 civil action to obtain appropriate relief for a violation of this section:

1           1. A woman on whom an abortion has been performed without her informed  
2 consent as required by this section.

3           2. The father of the unborn child if the father is married to the  
4 mother at the time she received the abortion, unless the pregnancy resulted  
5 from the father's criminal conduct.

6           3. ~~The A~~ maternal ~~grandparents~~ GRANDPARENT of the unborn child if the  
7 mother was not at least eighteen years of age at the time of the abortion,  
8 unless the pregnancy resulted from ~~either of~~ the maternal grandparent's  
9 criminal conduct.

10          4. A WOMAN WHO WAS NOT PROVIDED WITH INFORMATION REGARDING HER RIGHT  
11 TO A LEGAL ABORTION BY A PRIVATE AGENCY THAT CLAIMS TO ASSIST A WOMAN THROUGH  
12 PREGNANCY UNLESS THAT AGENCY NOTIFIED THE WOMAN PURSUANT TO SUBSECTION A,  
13 PARAGRAPH 2, SUBDIVISION (b) OF THIS SECTION THAT THE AGENCY DOES NOT PROVIDE  
14 ANY INFORMATION ABOUT ABORTION SERVICES.

15          E. A civil action filed pursuant to subsection D of this section shall  
16 be brought in the superior court in the county in which the woman on whom the  
17 abortion was performed resides and may be based on a claim that failure to  
18 obtain informed consent was a result of simple negligence, gross negligence,  
19 wantonness, wilfulness, intention or any other legal standard of care.  
20 Relief pursuant to this subsection includes the following:

21           1. Money damages for all psychological, emotional and physical  
22 injuries resulting from the violation of this section.

23           2. Statutory damages in an amount equal to five thousand dollars or  
24 three times the cost of the abortion, whichever is greater.

25           3. Reasonable attorney fees and costs.

26          F. A civil action brought pursuant to this section must be initiated  
27 within six years after the violation occurred.

28          G. For the purposes of this section:

29           1. "Lethal fetal condition" means a fetal condition that is diagnosed  
30 before birth and that will result, with reasonable certainty, in the death of  
31 the unborn child within three months after birth.

32           2. "Nonlethal fetal condition" means a fetal condition that is  
33 diagnosed before birth and that will not result in the death of the unborn  
34 child within three months after birth but may result in physical or mental  
35 disability or abnormality.

36           3. "Perinatal hospice" means comprehensive support to the pregnant  
37 woman and her family that includes supportive care from the time of diagnosis  
38 through the time of birth and death of the infant and through the postpartum  
39 period. Supportive care may include counseling and medical care by  
40 maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia  
41 specialists, clergy, social workers and specialty nurses who are focused on  
42 alleviating fear and ensuring that the woman and her family experience the  
43 life and death of the child in a comfortable and supportive environment.